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Kentucky Tennessee Clay Company and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.
Cases 11-CA-18941 and 11-CA-18951

June 5, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND TRUESDALE

Pursuant to charges filed by the Union on February 16, 2001, in Case 11-CA-18941 and on March 6, 2001, in Case 11-CA-18951, the Acting General Counsel of the National Labor Relations Board issued a consolidated complaint on March 22, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 11-RC-6376. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On April 23, 2001, the Acting General Counsel filed a Motion for Summary Judgment. On April 25, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Subsequently, the Respondent notified the Board that it would not file a response to the Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but contends that the Board erroneously certified the Union as the bargaining representative. In the underlying representation proceeding, the Board overruled the Respondent's objections to the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We

therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent admits, that on November 20, 2000, the Union requested the following information from the Respondent:

1. Names, rates of pay, classification, and seniority dates of all employees.
2. All rules and policies in the facility.
3. Current benefits package.

It is well established that the foregoing type of compensation and employment information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.¹ The Respondent has not attempted to rebut the relevance of the information requested by the Union. Instead, in its answer, the Respondent relies solely on its challenge to the validity of the Union's certification as the basis for its denial that it has a duty to provide the Union with the requested information. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with a facility located in Langley, South Carolina, where it is engaged in the business of mining and processing of Kaolin. During the 12 months preceding the issuance of the consolidated complaint, which period is representative of all material times, the Respondent purchased and received at its Langley, South Carolina facility goods and materials valued in excess of \$50,000 directly from points outside the State of South Carolina, and sold and shipped from its Langley, South Carolina facility products valued in excess of \$50,000 directly to points outside the State of South Carolina. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act,

¹ See, e.g., *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Co.*, 233 NLRB 109 (1977).

and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held March 15, 2000, the Union was certified on November 2, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees, including mining and processing employees and leadmen employed by the Respondent at its Langley, South Carolina facility; excluding lab technicians, office clerical employees, guards, professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since November 20, 2000, the Union has requested the Respondent to bargain and to furnish information described above, and, since the same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 20, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested by it on November 20, 2000.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*,

149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Kentucky Tennessee Clay Company, Langley, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees, including mining and processing employees and leadmen employed by us at our Langley, South Carolina facility; excluding lab technicians, office clerical employees, guards, professional employees and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on November 20, 2000.

(c) Within 14 days after service by the Region, post at its facility in Langley, South Carolina, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 20, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 5, 2001

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Peter J. Hurtgen,	Chairman
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Wilma B. Liebman,	Member
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John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
 APPENDIX
 NOTICE TO EMPLOYEES
 POSTED BY ORDER OF THE
 NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees, including mining and processing employees and leadmen employed by us at our Langley, South Carolina facility; excluding lab technicians, office clerical employees, guards, professional employees and supervisors as defined in the Act.

WE WILL provide the Union with the information it requested on November 20, 2000.

KENTUCKY TENNESSEE CLAY COMPANY